

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

TOTALOGISTIX, INC.,

Plaintiff,

v.

MARJACK CO., INC.,

Defendant.

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Civil Action No. 06-5117 (JAG)

ORDER

GREENAWAY, JR., U.S.D.J.

This matter comes before this Court on the motion plaintiff, Totalogistix, Inc., for summary judgment, pursuant to FED. R. CIV. P. 56, against defendant, Marjack Co., Inc., (“Defendant” or “Marjack”); and on the motion of Marjack to appeal the magistrate judge’s discovery order, and on its cross-motion for partial summary judgment¹, pursuant to FED. R. CIV. P. 56, against Totalogistix. This Court having reviewed the submissions of the parties, and for the reasons set forth in this Court’s opinion,

IT IS on this 30th day of March, 2009,

ORDERED that Plaintiff’s motion for summary judgment (Docket Entry No. 57), pursuant to FED. R. CIV. P. 56, is granted, as to Defendant’s breach of fiduciary duty claim; and it is further

¹In its reply submission, Marjack adds a new cross-motion for partial summary judgment on Totalogistix’s unjust enrichment claim. To the extent that Marjack raises a new motion on reply, and not previously briefed, such motion is denied. See Bayer AG v. Schein Pharm., Inc., 129 F. Supp. 2d 705, 716 (D.N.J. 2001) (noting that reply briefs should only respond to respondent’s arguments “because the local rules do not permit sur-reply brief [and] a party opposing summary judgment has no opportunity to respond to newly minted arguments contained in reply briefs.”).

ORDERED that Plaintiff's motion for summary judgment (Docket Entry No. 57), pursuant to FED. R. CIV. P. 56, is denied, as to Defendant's breach of contract claim; and it is further

ORDERED that Defendant's cross-motion for partial summary judgment (Docket Entry No. 58, and revised as Docket Entry No. 60), pursuant to FED. R. CIV. P. 56, is denied; and it is further

ORDERED that Defendant's motion to appeal the magistrate judge's discovery order (Docket Entry No. 52), is denied; and it is further

ORDERED that a copy of this Order be served on all parties within seven (7) days of the date of entry of this Order.

S/Joseph A. Greenaway, Jr.
JOSEPH A. GREENAWAY, JR., U.S.D.J.